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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**

GENEVA

**ADMINISTRATIVE AND LEGAL COMMITTEE****Second Session****Geneva, November 15 to 17, 1978**

## COOPERATION WITH THE EUROPEAN COMMUNITIES

prepared by the Office of the Union

At its fourth extraordinary session, held on October 18, 1978, the Council discussed whether it would be desirable to establish cooperation between the European Communities and UPOV. The Council was informed of an exchange of letters between the Commission of the European Communities and WIPO regarding a cooperation agreement. The relevant letters are attached in Annex II to this document. The Council has requested the Administrative and Legal Committee to study the subject at its second session from November 15 to 17, 1978, and has asked the Office of the Union to prepare that discussion by submitting a document on the implications of establishing such a cooperation agreement between the European Communities and UPOV (see paragraph 8 of document C(Extr.)/IV/3). This preparatory paper is submitted in Annex I to this document.

[Annexes follow]

## ANNEX I

## COOPERATION WITH THE EUROPEAN COMMUNITIES

I. General Information

1. The Member States of the European Communities (which consist of the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community, established as separate Communities on the basis of separate treaties concluded in 1951 and 1957) are the following: Belgium, Denmark, France, Germany (Federal Republic of), Ireland, Italy, Luxembourg, Netherlands, United Kingdom (9).

2. The tasks of the European Communities are to promote a harmonious development of economic activities and to contribute to economic expansion, to growth of employment, to the raising of the standard of living in their Member States, to closer relations between the said States, and to the development of relations with other countries. For these purposes, the activities of the European Communities include, inter alia, the establishment of a common market (for coal and steel and for goods), the approximation of the laws of its Member States to the extent required for the proper functioning of the common market, the abolition of obstacles to the freedom of movement for persons, services and capital, the adoption of common policies in the spheres of agriculture and transport, and the application of procedures to coordinate economic policies.

3. The tasks entrusted to the European Communities are carried out by the following institutions: the Assembly, the Court of Justice and the Economic and Social Committee (created by the Treaty of 1957), as well as the Council and the Commission (in the present form created by a treaty of 1965).

4. The responsibilities of the Commission of the European Communities include ensuring that the provisions of the treaties establishing the Communities and the measures taken by the institutions pursuant thereto are applied, formulating recommendations or delivering opinions on matters dealt with in the said treaties, participating in the shaping of measures taken by the Council and by the Assembly, and exercising the powers conferred on it by the Council for the implementation of the rules laid down by the latter.

II. Cooperation Between the Commission of the European Communities and WIPO

5. WIPO has concluded a cooperation agreement with the Commission of the European Communities. The interest of the Commission of the European Communities in the field of the protection of intellectual property includes the establishment of a Community system of patents; the preparation of a Community law on trademarks; the application of existing Community laws on appellations of origin for wines and cheeses; the examination of national laws within the Communities relating to geographical indications generally, with a view to harmonization at Community level; similar examinations in the field of trade names, industrial designs, the protection of commercial secrets, know-how and computer software, rights derived from rules on unfair competition and certain aspects of copyright; the surveillance of the contribution of industrial property rights to the Communities' internal market and to the Communities' external trade; and the administration and documentation of certain categories of industrial property rights.

6. The cooperation agreement between the Commission of the European Communities and WIPO is in the form of an exchange of letters between the President of the Commission and the Director General of WIPO. These letters are reproduced in Annex II to this document. It is to be noted that the terms of the cooperation agreement relate only to cooperation between WIPO and the Commission of the European Communities and do not extend to working relations or cooperation between WIPO and other institutions of the European Communities.

III. Future Cooperation Between the European Communities and UPOV

7. The European Communities are very actively engaged in the regulation of the production and marketing of seeds and planting material, including the testing of plant varieties. Since the testing carried out in this connection is to some extent comparable to the testing performed prior to the granting of plant breeders' rights,

an official of the Commission of the European Communities visited the Office of the Union in November 1977 and inquired about the possibilities of establishing cooperation, limited to technical matters, between his office and UPOV (see paragraph 37 of document CC/XVI/5). The present cooperation between the Commission of the European Communities and UPOV, established after that visit, consists mainly of exchanges of documents. The Office of the Union sends copies of draft and final Test Guidelines to the Commission of the European Communities.

8. The decision of the Commission of the European Communities concerning proceedings under Article 85 of the Treaty of the European Economic Community (legislation on plant variety protection, maize seed) and the participation of representatives of the European Communities at the Diplomatic Conference of UPOV held in October this year indicate an increasing interest on the part of the European Communities in matters relating to plant breeders' rights. Given that seven of the present ten member States of UPOV are members of the European Economic Community, it seems to be important to clarify whether, at the present time, cooperation in the field of plant breeders' rights should be established between the two organizations, on a formal basis. If this question is answered in the affirmative, it has to be decided whether, and to what extent, such a cooperation agreement should follow the pattern of the exchange of letters between the Commission of the European Communities and WIPO.

9. The Committee is invited to make the necessary recommendations to the Council.

[Annex II follows]

## ANNEX II

LETTER ADDRESSED BY THE PRESIDENT OF THE COMMISSION OF THE EUROPEAN COMMUNITIES (CEC), MR. ROY JENKINS, TO THE DIRECTOR GENERAL OF WIPO, DR. ARPAD BOGSCH, ON JULY 5, 1977

I have the honor to refer to your letter of 9 January, 1976, in which you suggest that a working agreement be concluded to strengthen cooperation between the World Intellectual Property Organization and the Commission of the European Communities.

Following upon the consultations which have taken place since then between our respective representatives, I have the pleasure to propose to you that our future cooperation be based on the following provisions:

1. The Commission and the Organization will exchange, as necessary, any relevant information and documentation in the field of the protection of intellectual property.
2. Periodic consultations will take place between the Commission and the Organization in order to determine in advance the meetings of mutual interest in which each may participate upon the invitation of the other.
3. The Commission and the Organization will also consult on the possibility of convening jointly seminars and symposia and, where appropriate, cooperating in other activities of mutual interest.

For its part, the Commission is prepared to consider inviting representatives of the Organization, in appropriate cases, to contribute to the preparatory work that the Commission undertakes in the field of the protection of intellectual property before the Commission draws up its formal proposals or takes its decisions.

It is understood that any participation of the European Communities in the negotiation of treaties or other international instruments taking place in diplomatic conferences convened by the Organization will be the subject of appropriate decisions taken by the competent bodies of the Organization or of the Unions administered by the Organization or of the said conferences.

If the provisions under 1. to 3., above, meet with your agreement, I propose that they constitute the agreement on cooperation in the field of the protection of intellectual property between the Commission of the European Communities and the World Intellectual Property Organization.

LETTER ADDRESSED BY THE DIRECTOR GENERAL OF WIPO, DR. ARPAD BOGSCH,  
TO THE PRESIDENT OF THE COMMISSION OF THE EUROPEAN COMMUNITIES (CEC),  
MR. ROY JENKINS, ON JULY 15, 1977

I have the honor to acknowledge receipt of your letter of July 5, 1977, in which you propose that the future cooperation between the Commission of the European Communities and the World Intellectual Property Organization be based on the following provisions:

1. The Commission and the Organization will exchange, as necessary, any relevant information and documentation in the field of the protection of intellectual property.
2. Periodic consultations will take place between the Commission and the Organization in order to determine in advance the meetings of mutual interest in which each may participate upon the invitation of the other.
3. The Commission and the Organization will also consult on the possibility of convening jointly seminars and symposia and, where appropriate, cooperating in other activities of mutual interest.

I have taken due note that the Commission for its part is prepared to consider inviting representatives of the Organization, in appropriate cases, to contribute to the preparatory work that the Commission undertakes in the field of the protection of intellectual property before the Commission draws up its formal proposals or takes its decisions.

It is understood that any participation of the European Communities in the negotiation of treaties or other international instruments taking place in diplomatic conferences convened by the Organization will be the subject of appropriate decisions taken by the competent bodies of the Organization or of the Unions administered by the Organization or of the said conferences.

The provisions under 1 to 3, above, are agreeable to me and, subject to the approval of the Coordination Committee of the World Intellectual Property Organization, which I shall seek to obtain next September, they constitute the agreement on cooperation in the field of the protection of intellectual property between the Commission of the European Communities and the World Intellectual Property Organization.

In the interim, I shall apply the said provisions on a provisional basis. I shall inform you next October of the decision of the Coordination Committee of the World Intellectual Property Organization.

[End of Annex II and of document]